IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2179 of 2002
Date of Decision: 14.8.2007

Baldev Singh ....Appellant

Versus

Gurdev Singh and others ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri G.S. Dhillon, Advocate, for the appellant.

Shri G.S. Nagra, Advocate, for the respondents.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned Courts below, whereby the suit for declaration that the plaintiff is owner in possession of the suit land by virtue of agreement dated 15.2.1976, was dismissed.

The parties are real brothers. It is the case of the appellant that on 15.2.1976, an agreement was executed between the appellant and defendant Nos. 1 and 2, whereby the defendants were entitled to their share and possession over the land in dispute after the payment of the price of the land to the plaintiff and till such time, the plaintiff would remain in possession as owner. It is further contemplated in the said agreement that in case of failure to pay the amount, it shall be open to the plaintiff to seek amendment in the sale deeds.

It is the case of the plaintiff that he has purchased

the land measuring 6 kanals 11 marlas on 20.5.1976; 3 kanals 5 marlas on 14.6.1976; 6 kanals 11 marlas on 17.1.1977 and 1 kanal 3 marlas vide sale deed dated 20.3.1979. The said sale deeds are in favour of the plaintiff and the defendants. It is the case of the plaintiff that the defendants have not paid the sale consideration as per the agreement. Therefore, the plaintiff is entitled to declaration.

Both the Courts have found that the agreement stipulates the consequence of non-payment and, therefore, the plaintiff has a right to seek deletion of the names of the defendants from the sale deeds or to seek the recovery of the amount. The said judgment and decree was affirmed by the first Appellate Court, as well.

Learned counsel for the appellant has vehemently argued that in terms of the agreement dated 15.2.1976, the appellant is entitled to be declared as owner of the suit land as the defendants have failed to pay part of the sale consideration agreed.

The arguments raised by the learned counsel for the appellant are not sustainable. Any right to claim sale consideration from the defendants arose when the sale deeds were executed. Similarly, the plaintiff could seek deletion of the names of the defendants from the sale deeds after the failure of the defendants to make the payment of the sale consideration in terms of the agreement arrived at. The present suit has been filed in October, 1999 i.e. almost after 20 years of the execution of the sale deed. The defendants have been recorded as owners of the suit land in the sale deeds. Therefore, the plaintiff cannot seek declaration regarding title of the land in view of the provisions of the Benami Transactions (Prohibition)Act, 1988.

In view of the above, I do not find any patent illegality or material irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

14-08-2007 (HEMANT GUPTA)
ds JUDGE